

1 WEISS & JONES  
2 Philip E. Weiss, Esq.  
3 1551 Shelter Island Drive  
4 San Diego, California 92106  
5 Telephone: (619) 225-8884  
6 Facsimile: (619) 225-8801

7  
8 Attorneys for Plaintiff  
9 Bartell Hotels, a California Limited Partnership,  
10 dba Half Moon Anchorage

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

BarTELL HOTELS, A California Limited  
Partnership, dba HALF MOON ANCHORAGE,

Plaintiff,

v.

M/Y CLAIRE IRENE, a 1968 Owens Motor  
Yacht of Approximately 40-Feet In Length And  
11-Feet In Beam, Bearing California D.M.V.  
Registration No. CF 8646 ED, AND ALL OF  
HER ENGINES, TACKLE, ACCESSORIES,  
EQUIPMENT, FURNISHINGS AND  
APPURTENANCES, *in rem*,

Defendant.

} Case No. 07cv2097-L(BLM)  
} IN ADMIRALTY  
} DECLARATION OF PHILIP E.  
} WEISS IN SUPPORT OF VESSEL  
} ARREST AND REGARDING  
} SUBMISSIONS OF SECOND  
} APPLICATION FOR ORDER  
} AUTHORIZING ISSUANCE OF  
} WARRANT FOR VESSEL ARREST  
} AND SECOND APPLICATION  
} FOR ORDER APPOINTING  
} SUBSTITUTE CUSTODIAN  
}  
} F.R.C.P. Supplemental Admiralty  
} Rules C and E.

I, Philip E. Weiss, declare under penalty of perjury under the laws of the United States and the State of California that the following is true and correct.

1. I am an attorney for Plaintiff BARTELL HOTELS, dba HALF MOON ANCHORAGE (hereinafter "PLAINTIFF") in this action. I am in good standing and licensed to practice before all State and Federal courts located in California, including the United States District Court for the Southern District of California. The focus of my practice is now, and has been for approximately 17 years, maritime law, a subject I have taught as an Adjunct Professor for approximately the past eight years. I also serve by designation of the

reviewed by the court and, if the conditions for an action in rem

"[...] the verified complaint and any supporting papers shall be

Rules for Certain Admiralty and Maritime Claims, as amended April 29, 1983, which states:

Rules for Admiralty and Maritime Claims, and in conformance with Rule C(3), Supplemental

for Order Authorizing issuance of warrant for Arrest, pursuant to Southern District Local

This declaration is submitted in support of PLAINLIFE's Second Application

Authorizing issuance of A Warrant for Arrest of Defendant Vessel.

Declaration I filed earlier in this action in support of Plaintiff's Application for Order

Pleading. Apart from this Paragraph, this Declaration is substantially identical to the

(despite his requests) has not returned it or a copy, so it can be attached to Plaintiff's

Complainant because, some years ago, Mr. Ardelet forwarded it to an insurance company, which

customary) to attach a copy of the wharfage contract at issue to its originally filed Verified

simultaneously with the Amended Verified Complaint), Plaintiff was unable (as is

Concerning Existence of Month-to-Month Wharfage Contract for Defendant Vessel (filed

wharfage contract at issue. As explained in detail in the Declaration of Michael J. Ardelt

Order. Attached as Exhibit A to this Amended Complaint is a copy of an exemplar of the

Actual details that are intended to address issues raised in the Court's November 15, 2007

and recently filed an Amended Verified Complaint for Vessel Arrest, which provides further

## Applications for Vessel Arrest and Appointment of Substitute Custodian

## Order (1) Dismissing Complaint With Leave to Amend and (2) Denying As Moot

2. In order to address issues raised in this Honourable Court's November

herein and if called and sworn to testify, could and would competently so testify.

this Honorable Court as a matter of law. I have personal knowledge of the facts recited

encumbers the Defendant Vessel, and that therefore she is subject to arrest by Order of

of California. Based on the above experiences I believe Plaintiff holds a maritime lien that

least three dozen vessels over the past five years, in both the Southern and Central Districts

Specialization of Admiralty and Maritime Law. I believe I have caused the vessel arrested.

California Bar Association Board of Legal Specialization on the Consulting Group for

he would be unable to obtain another slip for his vessel, even if improved, "because

28

\$70,000, he would sue PLANTIFF for \$1.2 million. He also indicated that he believed that

27

VESSEL. To the contrary, he insisted that if PLANTIFF did not pay him \$50,000 to

26

remove her from the Marina. Mr. Hack did not agree to remove the DEFENDANT

25

she had not been removed from the Marina and in order to ascertain his intentions vis-a-vis

24

2007) I contacted Mr. Hack, the owner of the DEFENDANT VESSEL, to inquire as to why

23

6. On the date specified for termination of the wharfage contract (August 20,

22

current owner of the Marina.

21

marina manager employed by a former owner are not properly addressed by PLANTIFF, the

20

advantage concerning damage to his vessel and financial and other misconduct by a

19

interlocutory vessel sale. I also reminded Mr. Hack in this letter that any allegations he might

18

trespasser, and could be held accountable by way of a vessel arrest and subsequent

17

DEFENDANT VESSEL was not removed by the specified date she would become a

16

fiction indulged in admiralty that a vessel is a (juristic) person, and hence that if the

15

following the date of my letter - September 20, 2007. In this letter I also explained the legal

14

termination of the wharfage contract for the DEFENDANT VESSEL, effective 34 days

13

correct copy is hereto attached as Exhibit A. In this letter I notified Mr. Hack of the

12

Mr. Hack, who is believed to be the owner of the DEFENDANT VESSEL. A true and

11

5. On August 17, 2007 I caused to be dispatched via Certified U.S. Mail a letter to

10

PLANTIFF's marina without contractual or any other legal authority.

9

for her benefit. The DEFENDANT VESSEL remains as a trespasser in a slip at

8

DEFENDANT VESSEL and on her failure and refusal to pay for wharfage services provided

7

subsequent satisfaction of PLANTIFF's maritime liens, based both on the trespass of the

6

4. I was instructed to seek the arrest of the DEFENDANT VESSEL, and

5

warrant . . . and [it] shall be delivered to the marshal for service."

4

shall issue and be delivered to the clerk who shall prepare the

3

arrest of the vessel or other property that is the subject of the action

2

appeal to exist, an order so stating and authorizing a warrant for the

1

Philip E. Weiss



Executed on January 10, 2008 at San Diego, California.

so testify.

10. If called to testify as to the foregoing matters, I could and would competently

22 preserve the value of the res.

21 serves the purpose of minimizing *custodia legis* expenses, and hence the purpose of

20 past six years during which the plaintiff was appointed as the substitute custodian. This

19 least 20 vessel arrest cases (both in the Southern and Central Districts of California) in the

18 experience, insurance and capability to do so. I have served as counsel for plaintiffs in at

17 appointment of a party to serve as the Substitute Custodian, assuming of course that has the

16 in case law or pursuant to the Supplemental Admiralty Rules that prohibits or discourages the

15 Custodian during the pendency of the action. I am aware of no restriction, either statutory

14 9. In this action PLAINTIFF has applied to be appointed as the Substitute

13 (C)(B).

12 Arrest Warrant by the Clerk of this Honorable Court under Supplemental Admiralty Rule

11 8. There are no exigent circumstances which would justify execution of an Vessel

10 permission or legal authority of any kind.

9. The DEFENDANT VESSEL remains at PLAINTIFF's Marina, without its

8 PLAINTIFF even owned the Marina.

7 thousand of dollars - apparently for damages he believes his vessel sustained long before

6 marina tenants) and that he will not move his vessel unless PLAINTIFF paid him tens of

5 Hach made it clear he was not inclined to sign a new wharfage contract (as is required of all

4 misconduct of the marina manager then employed by the former owner of the Marina. Mr.

3 before PLAINTIFF even owned HALF MOON ANCHORAGE, purportedly as the result of

2 PLAINTIFF is responsible for damage Mr. Hach claims his vessel sustained literally years

1 Homeland Security will not permit him to move." He seemed to believe that, somehow,

28

27

26

25

24

23

22

21

20

19

18

17

16

15

14

13

12

11

10

9

8

7

6

5

4

3

2

1